



# BOARD OF INQUIRY (*Human Rights Code*)

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IN THE MATTER OF the Ontario Human Rights Code, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint dated July 21, 1988 made by Mary Audia, alleging discrimination in employment on the basis of sex by Workers' Compensation Board.

B E T W E E N :

Mary Audia

Complainant

- and -

Workers' Compensation Board

Respondent

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## DECISION

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Adjudicator: Elizabeth Beckett

Date: June 2, 1995

Board File No: 93-0034

Decision No: 95-020



IN THE MATTER OF a complaint under the Human Rights  
Code, R.S.O. 1990, Chapter H. 19,

BETWEEN:

MARY AUDIA

Complainant

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
MINISTRY OF LABOUR and  
WORKERS' COMPENSATION BOARD

Respondent

Board of Inquiry:

Elizabeth Beckett

APPEARANCES:

Anne E. Posno  
Counsel for the Commission

Frank d'Andrea  
Counsel for the Complainant

Elizabeth Kosmidis  
Council for the Respondent

Dates of Hearing:

January 18,19, 20, 23,24,26.

Place of Hearing:

Toronto, Ontario

Mary Audia, the Complainant in this case, is alleging discrimination on the basis of sex against her employer, the Workers' Compensation Board. It is her contention that decisions taken by her employer regarding promotions and salary adjustments were partially based on the fact that she was a woman and therefore were discriminatory and contrary to the Ontario Human Rights Code, R.S.O. 1990, Chapter H. 19.

#### FACTS

Ms Audia began her employment as a secretary with the Construction Safety Association in 1968 and transferred to the Workers Compensation Board (WCB) in 1970 where she worked with the Safety Education Division. By 1975 she had attained the position of Secretary to the Council of Safety Associations and Community Projects, a part of the Safety Education Division of the WCB. The job of secretary was an administrative and organizational one with management responsibilities.

In 1981 Ms. Audia's boss, the Executive Director of the Safety Education Division Bill White, died suddenly and in February of that year Ms. Audia was given part of the responsibilities he had performed when she was appointed Acting Chairman of the Council of Safety Associations. In August of 1981 Ms. Audia was appointed Acting Executive Director of the Safety Education Division of the WCB. With this appointment she assumed in an "acting" capacity the role Mr. White had prior to his death, although only in Acting capacity. In August 1982 the

term "acting" was removed and Ms. Audia became the Executive

Director of the Safety Education Division of the WCB. At this time the Complainant was classified in the salary grade of 191 and was receiving the minimum salary of that grade. She was the first female to attain the rank of Executive Director within the WCB.

In 1984 after extensive reviews, reports and negotiation of which Ms. Audia was a part, the Safety Education Division was replaced with a new tripartite model representing labour, management and the WCB. It was named the Occupational Health and Safety Education Authority and became known as OHSEA. Very senior people were put in place to manage this new system and Mary Audia was not one of them.

With assurances that she would be maintained at a "senior level" from Mr. MacDonald, who was then the General Manager of the WCB, Ms. Audia accepted a two year secondment to the Ministry of Labour in December of 1984. In late 1986 negotiations began to reassign Ms. Audia as her secondment was concluded. At this time the WCB's whole organization was in the midst of a massive restructuring.

During her time at the Ministry of Labour Ms. Audia was maintained at the salary level of a senior bureaucrat and her former job title continued to appear on the documents issued by the WCB. In 1987 Ms. Audia, together with hundreds of other employees of the WCB applied for positions within the new structure, including several positions at the senior level. She failed to be appointed to any of these but after negotiations was appointed Manager of Administrative Services at the Downsview Rehabilitation

Hospital. She began her work at Downsview in October of 1987. She viewed this move as a demotion in status although her salary level was maintained.

In the summer of 1988, after attempting unsuccessfully to settle her grievances with her employer Ms. Audia filed a complaint with the Human Rights Commission. In 1991 her complaint was assigned to the Special Task Force and in December of 1992 a Commission panel reviewed the investigator's report but sent it back for further investigation. In August of 1993 a new report was sent to the Panel of Commissioners and in 1994 a Board was appointed. The case was then further delayed because of unavailability of counsel at the Commission. On December 15, 1994 I heard arguments on a preliminary motion to quash this hearing because of delay. I denied that motion in an interim decision dated January 15, 1995.

### ANALYSIS

There are three distinct areas that are the subject matter of this complaint. The first is the treatment the Complainant received in 1984 following the establishment of OHSEA. The second is the treatment the Complainant received in 1986 following her secondment to the Ministry of Labour. The third is her general treatment with regard to salary compensation. In each area the Complainant's allegation is one of discrimination on the basis of sex.

### THE 1984 DECISION



The history of this complaint starts with a triumph for Ms. Audia when she was named the first female Executive Director within the WCB. This appointment created certain expectations in the Complainant regarding her future with the WCB. Mr. MacDonald, who was a former vice-chair of the WCB, testified at the hearing. He was the General Manager of the WCB during this period. He testified that management made the decision to appoint Mary Audia to management responsibilities in the worker safety area knowing that this position was a "caretaking" role as this area was under going re-organization and a very different approach to safety was being planned in response to a report that had been prepared by Dr. Mustard and Mr. Wieler. Mr. McDonald said that when Mr. White died Ms. Audia was the "logical choice". "She was there and knew about the existing programme. No one opposed it." In fact no other candidates were even considered. He testified that the decision to make her Acting Executive Director was made to recognize that she was clearly doing more than the job of Secretary to the Council. In 1982 management was preparing for a major change yet they needed someone to carry on the present programme in a skilful way. Mr. McDonald testified that they move Ms. Audia from Acting to full Director to give her more credibility with the industry people she was dealing with in the occupational safety field. These people needed to be kept "on side" so that the new model being planned could be put into place.

Mr. McDonald said that one could not really compare her directorship with others at the board. Ms. Audia's area was small

and did not have the authority of the other directorships. He said it was "apples and oranges". It was Mr. McDonald's testimony that Ms. Audia was not considered for any of the positions within the new authority because she did not have the qualifications necessary to do the jobs envisioned by the new model.

Mr. John Rideout testified at the hearing. He was hired by Doug Hamilton, a senior manager who has since died, to assist in developing the new relationship between management, labour and the WCB around the issue of safety in the workplace. Mr. Rideout was given a place in OHSEA. A review of his resume (exhibit 68) clearly indicates that Mr. Rideout had very senior and expert qualifications. It was his testimony that the new position he assumed, although it had a similar job title and some of the same functions as the job carried out formerly by Ms. Audia was "significantly different; more complex. ... The position included being chair of the Joint Policy Board which was composed of very senior people."

Mr. Boucher was hired in 1984 into the position representing the interest of the WCB in the new organization. In announcing his appointment Mr. Alexander reviewed some of Mr. Boucher's qualifications. He stated Mr. Boucher had been a Commissioner of the British Columbia WCB, that he had developed and enforced industrial health and safety regulations and programmes, and that Mr. Boucher served as a Director for Compensation Advisory Service Branch of the British Columbia Ministry of Labour. This shows the calibre of appointments that were made to OHSEA.



It is the finding of this Board that in 1984 the WCB had a new vision for the delivery of service in the occupational health area and Ms. Audia did not have the qualifications for the new job. The decision not to give her the appointment she desired was not based on her sex but rather on her limited experience.

#### 1986/7 DECISIONS

The secondment to the Ministry of Labour was an attempt to protect the Complainant in the midst of the re-organization of the Safety Division. At this time Ms. Audia's job status was 199, an unclassified status. She continued to be paid at the lowest level of Executive Director. The complainant attempted to show that leaving her at an unclassified salary rather than giving her the classification of Executive Director was discriminatory as it left her more vulnerable than other Directors who were also experiencing job re-assignment because of the changes. I do not believe this was proven.

Ms. Audia was vulnerable because of a changing work place. It was not proven that her job classification made her more so. The 1986/7 re-structuring was a massive effort to bring the WCB into the 20th century. This was just at the time that Ms. Audia's secondment to the Ministry of Labour was ending. She had had the assurance of Mr. McDonald in 1984, that her senior level position would be protected. This assurance was reiterated by Lincoln Alexander, who was at that time the Chair of the WCB, in a press release dated July, 1984 (exhibit 34). He says that "Since the

Authority (i.e. OHSEA) is now replacing the current Safety Educational Division, Ms. Audia is now available for special assignment. I shall be announcing a senior position that Ms. Audia will be assuming at a later date." A memo from the Assistant Deputy of Labour regarding Ms. Audia's secondment to the Ministry, dated January 7, 1985 indicates that this was accomplished. It says that it should be borne "in mind that Mary comes to us with the status of an Executive Director at WCB." (exhibit 33)

Maintaining Ms. Audia at this status could only be done in the context of the skills she had to offer the WCB. Dr. Kaegi, who joined the WCB as the first woman vice president in 1986, was the policy advisor on special services. Dr. Kaegi was part of the team that did considerable hiring in the 1986 re-organization. Following her secondment Ms. Audia was interviewed by Dr. Kaegi who testified that it was her opinion that Ms. Audia needed more time in supervisory roles before she would be ready for a director appointment. She stated that Ms. Audia's experience with the WCB, to that point, had been in a narrow field and it needed to be broadened to qualify her for Director and Executive level appointments. She testified that Ms. Audia had considerable skills to offer the organization and it was felt that the positions offered to her, (e.g. as a Manager at Downsview) although not at Director level were commensurate with the skills Ms. Audia had to offer. She also testified that "Mary's self-assessment was higher than others' assessment of her." Dr. Kaegi did not deny that one of the options discussed with the complainant was a severance

package. Ms. Audia accepted the position of Manager at the Downsview Centre. Although the salary grade of the job at Downsview was lower, Ms. Audia continued to be paid at her previous job rate. The job title was upgraded from that of "supervisor" to "manager".

A review of the evidence shows that although Ms. Audia was maintained for some years at a senior salary she was not placed in jobs at the Director level of responsibility. Her jobs may have been senior positions but they were not as senior as she would have liked. None of them were at the level of Director or Executive Director which was the classification of the job she was appointed to in 1981.

Many decisions were taken with regard to this Complainant during this very volatile time at the WCB. In several instances she was not treated as she would have wished. She compared her treatment with others and felt they were treated better. Given the history of the personalities involved it would have been strange if this were not so. Many of the men in Director and Executive Director jobs had very long and varied histories with the Board. As with Ms. Audia, individual decisions were reached with regard to the Directors and Executive Directors affected by the 1986/7 reorganization in order to carry it out in as a humane way as possible. Perhaps assurances were given in an informal way that simply could not be kept once the reality of the new structure was evident. Mr. MacDonald testified that although he had officially retired at this point he had agreed to stay on as a consultant. He

did this for only three months. During this time he advised many people who approached him to "lie low" and "see what happens". Clearly a new order was emerging and those with past power to protect faithful employees no longer had that influence.

In any event it would be extraordinary to treat each person the same based on a job title regardless of the actual circumstances of each case. The employer in this case created unrealistic expectations in the Complainant by its decisions following the death of Mr. White. Mr. McDonald testified that the position was one of caretaker but it created in the complainant the belief that she had been recognized as Executive Director material.

The WCB is a huge bureaucracy that experienced numerous attempts to "overhaul" its structure and "reorganize" its systems of operations. Some of these are driven by bureaucratic goals, such as the Haye Salary Classification, and others are more philosophical, such as the Mustard Report and the Wieler Report. Each time there is a major report or reorganization there are massive changes to the organization that of necessity disrupt the employees who are working hard for the WCB and hoping to advance their individual employment goals.

In the late 1960's and though the 1970's the WCB was a male dominated workplace. The Board itself was all male as were all positions at the Executive Director level, all positions at the Director level and most positions at the General Manager level. Exhibit 81 shows that by 1987 this picture had changed: by then

there were female assistant directors, a female vice-president and nine female directors. When the 1986/7 restructuring took place there were several very well qualified women in place to compete for the few Executive level positions. Ms. Audia simply could not, at that time, compete with other more qualified people.

#### SALARY TREATMENT

Ms. Audia complains that she was treated differently in salary compensation from other managers and that this different treatment was due to the fact that she was a woman. At the hearing a tremendous amount of testimony and documentary evidence was produced in an attempt to prove this point. Ms. Audia was placed in the salary grade of 199 when she was made Acting Director. This is an "unclassified" salary grade. Ms. Kucerak, who is employed by the WCB in the area of compensation administration gave evidence as to the present practices of the WCB regarding salary classifications. She began her work in Human Resources in 1990 so was unable to give direct testimony as to the occurrences that are the subject matter of this complaint. On the other hand she was very knowledgeable about the history of the practices in this area. It is of course problematic when a complaint is allowed to go forward so long after the event in question. This puts the Respondent at a disadvantage in attempting to defend itself. It is my opinion that in these situations the evidence that is available to the Respondent should be given consideration and not be dismissed because it is not as direct as the Board would normally



require.

A review of the files available regarding Ms. Audia revealed a history of what she had been paid and a history of her job classifications but not an explanation as to why she was put into the various classifications she found herself in. Unfortunately the people who could give these explanations were not available to the Hearing. It must be emphasized that we are dealing here with one employee of over a thousand and that the events in question date back some thirteen years.

Ms. Kucerak testified, as did Mr. Shields and the Complainant herself, that many people are placed the unclassified salary category. Mr. Jim Shields, who was the Executive Director of Human Resources at the time of these events testified on this point. His testimony indicated that this classification is a convenient catch-all for anomalies that occur in a large work place. People who are temporarily posted, or who are posted to jobs that are themselves in a state of flux, or people who are given special assignments or jobs that for whatever reason defy categories may all find themselves for some period of time in the unclassified category. Once in that category the payroll department needs to know what to actually pay the person. Starting in 1990 there was a practice of paying a person who was unclassified the minimum salary of the job if the job itself was classified. Prior to 1990 the practice was more eclectic. Over the time span of this complaint Ms. Audia had several different jobs. In some of these jobs she was in an acting capacity and in some she was on temporary or special assignment.



In addition to this the WCB itself changed the way it graded jobs, switching from the Torrens System to the Haye System. This picture is further muddled because in addition to the above concerns special rules were periodically put in place to respond to measures enacted by the government to reduce spending. What emerges is a morass of numbers and job classifications from which this Board must decide if the Complainant was indeed discriminated against in her employment because of her sex.

It is the Board's decision that on the balance of probabilities this fact was simply not proven. It was shown that on several occasions decisions were made with regard to Ms. Audia that she did not agree with. On many of these occasions she took her complaint to those in authority and was given appropriate redress. It was proven that she was not always given the top grade classification in a given area. For example, when she took over Mr. White's job she was paid less than him, but on the other hand she was given a 40% pay increase. Over the years there were other incidents where increments were not given, or

only given after Ms. Audia herself demonstrated that she did indeed qualify for them. Despite this evidence I do not find that it was proven that these decision were taken because of Ms. Audia's sex.

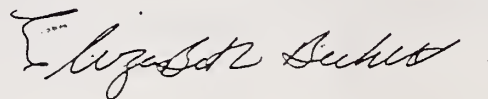
#### CONCLUSION

I regret that Ms. Audia has been embroiled in this

dispute for such a long period of time, almost five years since she actually filed her complaint. The passage of time makes it increasingly difficult to present to a board a clear picture of a situation. The six month time limitation in the Code was in this case overruled by the Panel of Commissioners and that allowed the Complainant to continue with a complaint which, in retrospect, it may have been better for her to reconcile herself with some years ago. It is possible that if witnesses were alive who could testify, or if memories were fresher, the allegations of the Complainant could be demonstrated. But in fact the picture presented to this Board is of a huge bureaucracy dealing in a bureaucratic way with a volatile and sensitive workplace. Although the Complainant may believe that she was treated shabbily it is the finding of this Board that that treatment was not based on her sex.

Date: JUN 2 1995

Chair



ELizabeth Beckett